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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 LARRY DEAN WEATHERMAN,

11 Petitioner,

12 v.

13 RON HAYNES,

14 Respondent.

CASE NO. C20-6087JLR

ORDER ADOPTING REPORT
AND RECOMMENDATION

15 Before the court is the Report and Recommendation of United States Magistrate
16 Judge David W. Christel (R&R (Dkt. # 16)) and Petitioner Larry Weatherman's
17 objections thereto (Obj. (Dkt. # 17)). Respondent Ron Haynes opposes Mr.
18 Weatherman's objections. (Resp. (Dkt. # 18).) Having reviewed these documents, the
19 relevant portions of the record, and the applicable law, the court ADOPTS the Report and
20 Recommendation (Dkt. # 16), DENIES Mr. Weatherman's petition for writ of habeas
21 corpus, and DISMISSES this action with prejudice.
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1 A district court has jurisdiction to review a Magistrate Judge's report and
2 recommendation on dispositive matters. Fed. R. Civ. P. 72(b). "The district judge must
3 determine de novo any part of the magistrate judge's disposition that has been properly
4 objected to." *Id.* "A judge of the court may accept, reject, or modify, in whole or in part,
5 the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1).
6 The court reviews de novo those portions of the report and recommendation to which a
7 party makes a specific written objection. *United States v. Reyna-Tapia*, 328 F.3d 1114,
8 1121 (9th Cir. 2003) (en banc). "The statute makes it clear that the district judge must
9 review the magistrate judge's findings and recommendations de novo if objection is
10 made, but not otherwise." *Id.*

11 The court has reviewed Mr. Weatherman's petition for writ of habeas corpus (Am.
12 Pet. (Dkt. # 7)), the Report and Recommendation, Mr. Weatherman's objections, and Mr.
13 Haynes's response to the objections. Magistrate Judge Christel determined that Mr.
14 Weatherman's petition is time-barred and that he is not entitled to equitable tolling.
15 (R&R at 1.) In determining that Mr. Weatherman's petition was not entitled to equitable
16 tolling, Magistrate Judge Christel analyzed Mr. Weatherman's evidence supporting his
17 argument of actual innocence and found that it was "insufficient to establish even a prima
18 facie gateway actual innocence claim" (*Id.* at 10-17.) He also determined that Mr.
19 Weatherman was not entitled to a certificate of appealability. (*Id.* at 18.)

20 Mr. Weatherman objects to Magistrate Judge Christel's determinations regarding
21 his claim of actual innocence and the certificate of appealability. (Obj. at 1.) Mr.
22 Weatherman's objections regarding actual innocence are the same arguments that he

1 made to Magistrate Judge Christel—that evidence not presented at trial concerning Mike
2 Baker, Weldon Paul Wagonknecht, Melissa Porter, and Mr. Weatherman’s time living at
3 the Oxford House demonstrates his innocence. (*Id.* at 3-7.) Magistrate Judge Christel
4 addressed these arguments in his Report and Recommendation and determined that they
5 were conclusory and insufficient to support an actual innocence claim. (*See* R&R at 10-
6 17.) The court has thoroughly examined the record and finds Magistrate Judge Christel’s
7 reasoning persuasive in light of the record. (*See id.*) Accordingly, the court
8 independently rejects Mr. Weatherman’s arguments regarding actual innocence for the
9 reasons that Magistrate Judge Christel did.

10 Mr. Weatherman’s second objection is regarding his certificate of appealability.
11 (Obj. at 1-2.) In essence, his objection consists of restating the legal standard for
12 certificates of appealability from Magistrate Judge Christel’s Report and
13 Recommendation and repeating the arguments from his petition. (*See id.*; R&R 18.) The
14 court agrees with Magistrate Judge Christel’s analysis and independently rejects Mr.
15 Weatherman’s arguments regarding a certificate of appealability.

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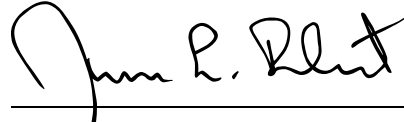
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1 For the foregoing reasons, the court ADOPTS the Report and Recommendation
2 (Dkt. # 16) in its entirety. Mr. Weatherman's federal habeas petition (Dkt. # 7) is
3 DENIED, and this action is DISMISSED with prejudice.

4 Dated this 9th day of June, 2021.

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7 JAMES L. ROBART
8 United States District Judge
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